

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Omar Jimenez,

Plaintiff

v.

Lopez,

Defendant

Case No. 2:23-cv-01994-JAD-DJA

**Order Dismissing
and Closing Case**

ECF No. 4

Plaintiff Omar Jimenez brings this civil-rights lawsuit to redress constitutional violations that he claims he suffered while incarcerated at High Desert State Prison. On December 5, 2023, this court ordered Jimenez to either pay the \$405 filing fee or file a complete application to proceed *in forma pauperis* by February 5, 2024.¹ That deadline expired, and Jimenez did not pay the fee, file an *in forma pauperis* application, or seek to extend the deadline to do so. Instead, Jimenez filed a motion for preliminary injunction that was non-responsive to the court's order.²

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.³ A court may dismiss an action based on a party's failure to obey a court order or comply with local rules.⁴ In determining whether to dismiss an action on this ground, the court must consider: (1)

¹ ECF No. 3.

² ECF No. 4.

³ *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

⁴ *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

1 the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its
 2 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
 3 cases on their merits; and (5) the availability of less drastic alternatives.⁵

4 The first two factors, the public’s interest in expeditiously resolving this litigation and the
 5 court’s interest in managing its docket, weigh in favor of dismissal of the plaintiff’s claims. The
 6 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
 7 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an
 8 action.⁶ The fourth factor—the public policy favoring disposition of cases on their merits—is
 9 greatly outweighed by the factors favoring dismissal.

10 The fifth factor requires the court to consider whether less drastic alternatives can be used
 11 to correct the party’s failure that brought about the court’s need to consider dismissal.⁷ Courts
 12 “need not exhaust every sanction short of dismissal before finally dismissing a case, but must
 13 explore possible and meaningful alternatives.”⁸ Because this court cannot operate without
 14 collecting reasonable fees, and litigation cannot progress without a plaintiff’s compliance with
 15 the court’s order, the only alternative is to enter a second order setting another deadline. But
 16 issuing a second order will only delay the inevitable and further squander the court’s finite

18 ⁵ *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
 19 *Malone*, 833 F.2d at 130).

20 ⁶ *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

21 ⁷ *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less
 22 drastic alternatives *before* the party has disobeyed a court order does not satisfy this factor);
 23 *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the
 persuasive force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic
 alternatives prior to disobedience of the court’s order as satisfying this element[.]” i.e., like the
 “initial granting of leave to amend coupled with the warning of dismissal for failure to
 comply[.]” have been “eroded” by *Yourish*).

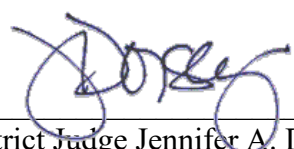
⁸ *Henderson*, 779 F.2d at 1424.

1 resources. Setting another deadline is not a meaningful alternative given these circumstances.
2 So the fifth factor favors dismissal.

3 Having thoroughly weighed these dismissal factors, I find that they weigh in favor of
4 dismissal. IT IS THEREFORE ORDERED that **THIS ACTION IS DISMISSED** without
5 prejudice based on Jimenez's failure to pay the filing fee or seek to proceed *in forma pauperis* in
6 compliance with the court's order. The Clerk of Court is directed to **ENTER JUDGMENT**
7 accordingly and **CLOSE THIS CASE**. If Omar Jimenez wishes to pursue his claims, he must
8 file a complaint in a new case, and he must pay the fee for that action or file a complete
9 application to proceed *in forma pauperis*.

10 IT IS FURTHER ORDERED that the motion for preliminary injunction [ECF No. 4] is
11 denied without prejudice as moot.

12 Dated: February 22, 2024



U.S. District Judge Jennifer A. Dorsey